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MICHAEL RODAK, JR., CL

Case No. 80-332

IN THE

Supreme Court of the United States

OCTOBER TERM 1980

JAMES A. RHODES, et al.,

Petitioners,

vs.

KELLY CHAPMAN, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER THE DOUBLE CELLING OF PRISON INMATES CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT WHERE THE RECORD INDICATES THAT THE PRACTICE DOES NOT DEPRIVE INMATES OF MINIMUM CONSTITUTIONAL GUARANTEES TO ADEQUATE FOOD, CLOTHING, SHELTER, SANITATION, MEDICAL CARE AND PERSONAL SAFETY.

PARTIES

The petitioners in this action are James A. Rhodes, Governor of the State of Ohio, George F. Denton, Director of the Department of Rehabilitation and Correction, and Ronald G. Marshall, Superintendent of the Southern Ohio Correctional Facility, as the successor to Arnold R. Jago, a named defendant in the courts below. The respondents are Kelly Chapman and Richard Jaworski, the named plaintiffs in the courts below for a class of all inmates at the Southern Ohio Correctional Facility.

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DECISIONS BELOW

The decision of the United States Court of Appeals for the Sixth Circuit is unreported. (A-2).The decision of the United States District Court for the Southern District of Ohio, Western Division is reported as *Chapman v. Rhodes*, 434 F. Supp. 1007 (S.D. Ohio 1977). (A - 4).

JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit was entered June 6, 1980. Jurisdiction is conferred by 28 U.S. C. Section 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment VIII to the Constitution of the United States prohibiting cruel and unusual punishment:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

made applicable to the states by Section 1 and 5 of Amendment XIV to the Constitution of the United States:

> SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

> SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

and enforced by Title 42, Section 1983, United States Code:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ot Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

This case was initiated in the United States District Court for the Southern District of Ohio, Western Division on July 10, 1975 by the filing of a complaint pursuant to 42 U.S.C. Section 1983 and 28 U.S.C. Section 1343 (3) arising out of conditions at Ohio's maximum security prison, the Southern Ohio Correctional Facility (SOCF). The complaint alleged that numerous facets of institutional life, connected with the practice of double celling inmates, amounted to cruel and unusual punishment prohibited by the Eighth Amendment of the United States Constitution. Specifically, the complaint alleged:

(1) violence and terror to an impermissible degree resulted from the practice of placing two inmates in the same cell;

(2) the number of guards and employees providing services to the inmate population is inadequate to serve the population, and the shortage of personnel has fostered violence and a lawless atmosphere;

(3) the inmates are not properly fed because food services are overtaxed;

(4) Overcrowding has limited access to the courts;

(5) heating and ventilation systems are not adequate;

(6) medical services are overtaxed; and

(7) inmate job opportunities and access to educational programs have been denied, thereby affecting the rehabilitation process. (A-8-A-9).

On April 1, 1976, the case was allowed to proceed as a class action. Thereafter, by order of March 23, 1977, the district court set the case for trial on respondents' second amended complaint on the sole issue of whether overcrowding at SOCF was unconstitutional.

The trial began on May 23, 1977 and concluded on May 27, 1977. On June 29, 1977, the district court issued its opinion declaring that double celling at SOCF was unconstitutional. (A - 4). The district court found that "on balance" the practice of placing two men in cells measuring variously 63 and 68 square feet was improper.

At the time of the trial, SOCF's population was approximately 2300 inmates and the institution contained 1620 cells. To solve that problem, approximately 1400 inmates were double celled with differentiation according to classification as to how much time was permitted outside the cells. Those inmates classified general population who were double celled were required to be in their cells between 9:30 p.m. and 6:30 a.m. (A-15-A-16). Idle classifications were permitted outside their cells between two and six hours per week. Reception inmates, approximately a two week process, were treated similiarly to the idle classification (A - 18).

The district court found SOCF to be a modern first rate institution, built in 1973 and possessing physical facilities able to accomodate the increased population. Food services, ventilation, lighting, plumbing, sanitation, law library and classroom facilities, medical services, visiting privileges and guard to inmate ratio were all adequate. The issue of clothing was not raised. The district court did find that there had been a watering down of jobs to make more jobs available, that some inmates had had educational opportunities delayed, though none had been denied an education, and that the number of psychologists and social workers had not increased with

the increase in population. Any inadequacy in dental services was not due to double celling. More importantly, the alleged increase in violence, described by respondents as a geometric increase due to double celling, was found to be non-existent. Any increase in violent incidents was due to increase in population and not double celling. (A-9, A-12, A-20 thru A-26, A-29, A-34).

Pursuant to the above findings, petitioners were directed to formulate a plan to eliminate double celling at SOCF. A petition for leave to file an interlocutory appeal was granted by the district court and denied by the Sixth Circuit Court of Appeals. A motion to stay execution of judgment was denied by the district court on September 20, 1977.

On February 16, 1978, the case was assigned for an evidentiary hearing on the plans proposed by defendants, plaintiffs' objections thereto, and plaintiffs' request for an incremental reduction order. The case progressed to hearing on March 7, 1978, at which time defendants orally, and in open court, asked for a reconsideration of the court's earlier conclusions of law.

By a memorandum of March 21, 1978, followed by the judgment entered on April 7, 1978, the district court adopted its prior findings of fact and ordered the defendants to reduce the population at SOCF from the assigned population of March 21, 1978 by twenty - five persons every thirty days until single celling was accomplished. (A - 42).

A notice of appeal was filed on May 1, 1978. On July 20, 1978, a motion for stay of execution of judgment and expedited hearing was denied by the appellate court. Following this Court's decision in *Bell v. Wolfish*, 441 U.S. 520 (1979), the district court on August 14, 1979 denied petitioner's motion for relief from judgment and stay of execution of judgment. Thereafter, on November 8, 1979, the appellate court, by 2 - 1 vote, denied a motion for advancement of hearing, summary reversal,

and stay of execution. Following briefing and oral argument on June 2, 1980, the appellate court, on June 6, 1980, issued its decision affirming the district court. (A - 2). This petition has followed.

ARGUMENT IN SUPPORT OF GRANTING CERTIORARI

A. Conflict With Decisions Of This Court.

The present case involves an important issue of constitutional law not specificially and previously answered by this Court - whether the double celling of convicted maximum security inmates constitutes cruel and unusual punishment where such practice does not deprive such inmates of the basic necessities of life. In resolving that double celling at SOCF is cruel and unusual punishment, the district court has held that such practice is per se unconstitutional. This is contrary to the holding of this Court in *Bell v. Wolfish*, 441 U.S. 520 (1979), where Mr. Justice Rehnquist, speaking for the majority, stated at 542:

> We disagree with both the District Court and the Court of Appeals that there is some sort of "one man, one cell" principle lurking in the due process clause of the Fifth Amendment.

To be sure, this Court's decision in *Bell* related to the status of pre-trial detainees. It is incongruous however that conditions which this Court did not find to be "punishment" for presumably innocent defendants blossoms into cruel and unusual punishment where convicted maximum security prisoners are involved.

Petitioners interpret this Court's statement in *Bell* that confining a given number of people in a given amount of space in such a manner as to cause them to endure genuine privations and hardships over an extended period of time might raise serious due process questions to mean that an affirmative showing of deprivation of constitutionality mandated rights must be made. No such

finding was made in this case. While concededly the district court found some limitations occasioned by an increase in population:

> *** an institution's obligation under the eighth amendment is at an end if it furnishes sentenced prisoners with adequate food, clothing, shelter, sanitation, medical care and personal safety. *Wolfish v. Levi*, 573 F 2d 118, 125 (2d Cir. 1978).

See also: *Newman v. Alabama*, 559 F. 2d 283, 291 (5th Cir. 1977), *cert. denied*, 438 U.S. 915 (1978).

Citing *Kennedy v. Mendoza - Martinez*, 372 U.S. 144, 168-169 (1963), this Court in *Bell* stated the criteria necessary to establish that a practice is punishment:

> Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding... of scienter, whether its operation will promote the traditional aims of punishment -- retribution and deterence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned are all relevant to the inquiry, and may often point in differing directions.

None of these criteria are present in the instant case. Double bunking of prison inmates is established both historically and in other prison systems and the practice has its analogies in the military, schools, colleges, and in the home. Moreover, the practice of double celling at SOCF was instituted because of an increase in the number of people sentenced to prison and an increase in the number requiring confinement in a maximum security setting. No inmate at SOCF was double celled as further punishment for his crime or as punishment for violation of an institutional rule. No expressed intent to punish was alleged by the respondents, nor was it alleged that the decision to double cell was arbitrary or purposeless. Ohio prison administrators were simply charged with the custody of more than 1620 maximum security prisoners and had no other adequate facilities in which to house them. That such a practice may be less than ideal in no way converts such practice into cruel and unusual punishment.

The respondents, of course, alleged a "totality of evils" emanating from the practice of double celling. The district court rejected such a broad based attack. SOCF is a modern prison, opened in 1973; a building having more than twenty acres under roof containing a 25,000 volumn library. The institution also contains a modern school, two chapels, two dining halls, two large gynasiums, a large well equipped industrial area, a large recreation yard, an outside visiting area with a children's playground, and well equipped medical facilities. The institution is light and airy; the food is good; the ventilation system, plumbing and lighting are completely adequate. The guard staff is adequate. More importantly, while an increase in tension may have resulted from the practice of double celling, it has not been manifested by a per capita increase in violence, and any

violence was found to be well within normal limits for such a prison. (A - 33). SOCF is simply not the unsanitary dungeon frequently pictured in prison litigation.

In reaching its decision, the district court focused on current standards promulgated by professional organizations respecting the desired size of prison cells and institutions. (A - 36). This Court in *Bell*, however, held that constitutional rights are not coextensive with or determined by such constantly changing, increasing and somewhat utopian standards. *Bell, supra*, at 543, n. 27. Prison administrators are limited by the reality of budgetary contraints and already existing physical facilities. *Bell* simply indicates that the Constitution forbids the deprivation of the basic necessities of life. While the district court found a watering down of jobs, a delay in education and less than desirable access to psychologists and social workers, such "rights" are not of the dimension basic to sustain life. In reaching its decision, the appellate court misapplied *Bell* and failed to heed the admonition that prison administration is best left to prison administrators. Certiorari should be granted on this basis alone.

B. Conflicts With Other Circuits.

The decisions of the courts below are in direct conflict with all other circuits which have addressed the issue. At least four other circuits have found double celling of convicted prison inmates to be constitutionally permissible. *Newman v. Alabama, supra; Wolfish v. Levi, supra; Detainees of Brooklyn H. of Det. for Men v. Malcolm*, 520 F. 2d 392 (2nd Cir. 1975); *Crowe v. Leeke*, 540 F 2d 740 (4th Cir. 1976); *Hite v. Leeke*, 564 F. 2d 670 (4th Cir. 1977); *Burks v. Walsh*, 461 F. Supp. 454 (W.D. Mo. 1978), *aff'd sub nom., Burks v. Teasdale*,

603 F. 2d 59 (8th Cir. 1979). The practice itself is not so barbarous as to shock the conscience of civilized society. *Hutto v. Finney*, 437 U.S. 678 (1978).

In all of the above decisions, the courts have taken the position, advanced by petitioners, that the right to relief turns not on the practice of double celling itself but whether such practice is part of a larger problem of unsanitary conditions, violence, or lack of food, clothing, shelter and medical care that are the basic necessities of life. Contrary to the decision of the district court, full employment, prompt education, and complete social service programs have not been found to be among such "rights."

The correct test has been stated in *Hite v. Leeke, supra*, at 574 - 575:

> So far as convicted prisoners are concerned, we have recently held specifically that the assignment of three prison inmates to a cell about the size of those with which we are concerned did not amount to "cruel and unusual punishment." *Crowe v. Leeke* (4th Cir, 1976), 540 F. 2d 740. The Court in that case emphasized that there was no contention there, just as there is not here, that the prisoners had been "subjected to mental abuse or corporal punishment; * * * deprived of the basic implements of personal hygiene; * * * [or] that his cell failed to meet reasonable sanitary standards." The petitioner's complaint - similar to that here - was simply that the assignment of three prisoners, confined

> in maximum security, to a cell was per se unconstitutional. Finding that there was no indication "that the overcrowding has resulted from an 'arbitrary or capricious' exercise of judgment by prison officals," the number of inmates, who may be safely assigned to a cell is a matter resting within the sound discretion of the prison administration, and the claim of cruel and unusual punishment was dismissed. Similarly in this case, it is clear that the defendants have not acted arbitrarily or capriciously in their assignments of inmates nor have they, in their dual assignments, been "the cause of deplorable or inhumane conditions."

As the district court's decision contravenes this test, certiorari should issue to resolve such question.

C. Importance Of The Issue.

In the last decade, prison litigation has flourished with a variety of conflicting decisions as to what is necessary to provide prisoners with minimum constitutional standards. In an era of increasing numbers of persons being committed to prison systems with limited resources, the area of greatest importance is the ability of such systems to be able to house such numbers. A clear statement from this Court is necessary to define the parameter of when or if prison officials may double cell in order to meet their burden.

In a real sense, the present case provides the proper vehicle for resolution of this issue. The State of Ohio has nine prisons housing 13,300 inmates in facilities

originally designed for 11,400. The only maximum security institution is SOCF. In addition to the population ceiling placed on SOCF, two other Ohio prisons are subject to federal court ordered ceilings. The result reached has had a wide ranging impact resulting in chaos for Ohio's system of classifying prisoners, a system originally found excellent by the district court. (A - 15). In addition, the case foreshadows the national dilemma of prison administrators faced with federal court ordered limitations on the number of prisoners the penal system may accept and their duties to accept prisoners committed by state courts. As this ruling effects a modern insititution such as SOCF, no other case will better offer an opportunity to define the issue. Certiorari should thus be granted to decide this issue of national importance.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the requisite number of copies of the foregoing Petition For Writ Of Certiorari have been served on respondents, Kelly Chapman, # 122-531, P.O. Box 45699, Lucasville, Ohio 45699 and Richard Jaworski, # 734304, River Junction Correctional Institution, P.O. box 37, Chattahoochee, Florida, 32324 by forwarding such copies through the office of their counsel, Jean P. Kamp, American Civil Liberites Union, Suite 204, 203 East Broad Street, Columbus, Ohio, 43215, Christopher D. Stanley, 611 Rockefeller Building, Cleveland, Ohio, 44113, and Louis A. Jacobs, Ohio State University, College of Law, 1659 North High Street, Columbus, Ohio, 43210, by United States mail, postpaid, this _____ day of _____, 1980. I further certify that all parties required to be served have been so served.

_____

ALLEN P. ADLER
Assistant Attorney General

APPENDIX

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NO. 78 - 3365

FILED
June 6, 1980
John P. Hehman, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

KELLY CHAPMAN, et al.

Plaintiffs - Appellees

v.

JAMES A. RHODES, et al.

Defendants - Appellants

ORDER

BEFORE: LIVELY and MARTIN, Circuit Judges; PECK, Senior Circuit Judge.

This is an appeal from a judgment of the district court finding certain conditions at a state prison to violate the Eighth Amendment prohibition against cruel and unusual punishment. *See Chapman v. Rhodes*, 434 F. Supp. 1007 (S.D. Ohio 1977). On appeal the State argues that the district court failed to render its decision on the basis of the totality of conditions at the prison and that instead the district court held "double celling" to be unconstitutional *per se*. The district court listed in its opinion a number of considerations upon which it based its finding that double celling at the particular prison in question is unconstitutional. We do not read the opinion as holding that double celling is unconstitutional under all circumstances. In response to a motion for relief from judgment which the State filed primarily in reliance on the decision of the Supreme Court of the United States in *Bell v. Wolfish*, 441 U.S. 520 (1979),

21 CL
2403

which appeared after the initial findings were made by the district court in the present case, the district court found no conflict with the decision of the Supreme Court and included a quotation from *Bell* which pointed out the differences between the prison at Lucasville, Ohio and the facility under scrutiny in *Bell v. Wolfish.*

Upon consideration of the record on appeal together with the briefs and oral arguments of counsel the court concludes that the findings of fact of the district court are not clearly erroneous, that its conclusions of law are permissible from the findings of fact and that the remedial provisions are a reasonable response to the violations which were found.

Accordingly, the judgment of the district court is affirmed,

ENTERED BY ORDER OF THE COURT

/s/ John P. Hehman
Clerk

A - 4

FILED
June 29, 1977

Kelly CHAPMAN, # 122531, Lucasville, Ohio, and Richard Jaworski, # 140 - 021, Lucasville, Ohio, Plaintiffs,

v.

James A. RHODES, Governor, George F. Denton, Director of Rehabilitation and Corrections, and A. R. Jago, Warden, SOCF, Lucasville, Defendants.

No. C - 1 - 75 - 251.

21 C.L 2403 (7)

United States District Court, S.D. Ohio, W.D.

Prisoners at state prison brought civil rights suit challenging constitutionality of "double celling" whereby two prisoners were housed in one cell. The District Court, Hogan, Chief Judge, held that: (1) practice of placing two prisoners in one cell at state prison was unconstitutional where prisoners were long term, "double celling" had resulted in prison exceeding its designed capacity by some 38%, cells were designed for one person and had square footage of approximately 63 square feet, double celled prisoners spent most of their time in cell with cell mate, and double celling was not a temporary measure but represented a trend which had continued for four years; but (2) only remedy immediately available was for court to declare double celling federally unconstitutional and order state to proceed with reasonable dispatch to formulate, propose and carry out some plan which would terminate double celling.

Ordered accordingly.

1. Witnesses 18

In civil rights suit challenging constitutionality of prison conditions, only seven of 35 requested writs of habeas corpus ad testificandum were granted at government expense in light of availability of substantial number of ex - prisoners and former prison employees who were subject to subpoena to testify as to conditions. 42 U.S.C.A. § 1983.

2. Criminal Law 1213

Confinement within a given institution may amount to cruel and unusual punishment where the confinement is characterized by conditions and practices so bad as to be shocking to the conscience of a reasonably civilized people. U.S.C.A. Const. Amend. 8.

3. Constitutional Law 272

Under the Fourteenth Amendment, a prisoner retains all the rights of an ordinary citizen except those expressly or by necessary implication taken from him by law. U.S.C.A. Const. Amend. 14.

4. Prisons 13

Convicted maximum security inmates do not have constitutional right to privacy or private living quarters.

5. Prisons 17

Prisoners have constitutional right to basic medical and dental care.

6. Prisons 17

Practice of placing two prisoners in one cell at state prison was unconstitutional where prisoners were long term, "double celling" had resulted in prison exceeding its designed capacity by some 38%, cells were designed for one person and had square footage of approximately 63 square feet, double celled prisoners spent most of their time in cell with cell mate, and double celling was not a

temporary measure but represented a trend which had continued for four years. U.S.C.A. Const. Amends. 8, 14.

7. Prisons 17

Only immediate relief which federal district court could provide with respect to unconstitutional "double celling" of prisoners in state prison was to declare such practice federally unconstitutional; court would not immediately order state to "single cell" or release prisoners but would require state to proceed with reasonable dispatch to formulate, propose and carry out a plan which would terminate double celling.

Christopher D. Stanley, Cleveland, Ohio, Robert P. App, American Civil Liberties Union of Ohio, R. Raymond Twohig, Jr., Louis A. Jacobs, Ohio State U. College of Law, Howard J. Rosenberg, Bruce Friedman, Jan C. Leventer, and Edward Clark Barrows, Columbus, Ohio, for plaintiffs.

Allen P. Adler, Leo J. Conway. Asst. Attys. Gen., Columbus, Ohio, for Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HOGAN, Chief Judge.

Introductory

The basic question in this case is whether or not the prisoners at the Southern Ohio Correctional Facility for Ohio state prisoners at Lucasville, Ohio, are presently being subjected to "cruel and unusual punishment" or are being "deprived of life or liberty without due process of law" by reason of the "double celling" — and its concomitants — which is now and has been for some time in effect at that institution.

The claim was made in this case, filed under 42 U.S.C. § 1983. by two inmates who had then recently been double celled. The federal rights claimed denied are those assured under the eighth and fourteenth amendments and this Court has basic jurisdiction under 28 U.S.C. §§ 1331 and 1343 (3). The action was first filed as a purported class action by the two inmates *pro se* and *in forma pauperis*. Certification as a class action was originally denied on the ground that the asserted representatives were not qualified to represent the claimed class. Thereafter, competent counsel entered appearances on behalf of the plaintiffs and thereupon the case was certified as a class action.

[1] The plaintiffs have proceeded from the start of this case through the evidentiary hearing *in forma pauperis*. Shortly before the trial a request was made for approximately 35 writs of habeas corpus ad testificandum and, in addition, plaintiffs moved for two writs of habeas corpus ad prosequendum. Seven of the writs were granted. The applications for the remainder were denied. It was and remains the opinion of this Court (a) that a substantial number of individuals resident of this District (including former inmates released since the practice of double celling began, former employees no longer in the employ of any of the Divisions of the State of Ohio — both of the professional and non - professional type) existed and were within the compulsion of subpoena; (b) that the plaintiffs were free to subpoena any such; and (c) because of that available pool, the availability of seven inmates for testimonial purposes was sufficient under all of the circumstances. No limitation was placed on the plaintiffs and every subpoena requested by the plaintiffs was issued without the prepayment of costs and at the eventual expense of the United States, and, in fact, a number of witnesses from the pool were subpoenaed and did testify at the trial of this case.

The five inmates who were produced at the trial pursuant to the writs of habeas corpus ad testificandum did in fact each testify. The two inmates who were present throughout the entire trial pursuant to the writs of habeas corpus ad prosequendum sat at counsel table and aided counsel throughout the trial of this case, which consumed a week. Neither of them was put on the stand, which fairly well indicates that the writs granted were sufficient. The plaintiffs' class, throughout the entire controversy in this Court, has been fully and adequately and capably represented by counsel and the class, as such, was given adequate membership representation of its own selection.

While the plaintiffs come close to it, [1] they do not claim that double celling is per se unconstitutional. The assertion is that under all the circumstances of this case the practice is per accidens unconstitutional. The circumstances asserted to cumulatively bring about that result are as follows:

a) That violence and terror, to an impermissible degree, result from such.

b) That the guard and staff level has not been increased, is inadequate to serve the present population and that the inadequacy has fostered lawlessness and violence.

c) The feeding facilities are overtaxed to the point that the prison population is not properly fed.

d) The overcrowding has unduly burdened access to the courts.

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[1] The plaintiffs do assert that double celling in an approimately 65 sq. ft. cell for the day - by - day times described herein is "per se" unconstitutional.

e) The heating and ventilation systems have been overtaxed to the point of rendering cell blocks intolerable.

f) Available medical services are overtaxed.

g) Job opportunites have not kept pace with the population, reducing the rehabilitation process and the same is true of the school and schooling facilities.

These findings and conclusions will be directed to those areas as the relevant ones, since the State has put at issue each of the claims.

FINDINGS OF FACT

I. The Facility

The Southern Ohio Correctional Facility is located near the Village of Lucasville, Ohio. The immediate area is rural. It is approximately 100 miles east of Cincinnati and approximately 10 miles north of Portsmouth, Ohio. It is Ohio's only maximum security penitentiary. It was built in the early 1970's at a cost of some $32 million. It was designed to replace the ancient Ohio Penitentiary in Columbus. It is on a huge acreage tract. The structures themselves, i. e., the facility proper, occupies more than 20 acres and is under "one" contiguous roof. Looking at it from a brick and mortar viewpoint, it is unquestionably a top - flight, first - class facility. It has been in use only a relatively few years.

One of the controversial issues in this case is the question of how many prisoners it was designed to house. "Designed to house" is a rather nebulous term in this field. Nationally, during the five or six years before Lucasville opened, the prison population in the United

States had dropped some eleven plus percent. Nationally, in the four years or so since it has opened, the trend has been reversed and the prison population has gone up almost forty percent. There is no controversy with this: As built, the facility contained some 1,660 cells, and for our present purposes, each cell was designed to and did contain one bed. It was therefore the contemplation of officialdom that the facility would, during its useful life, not be called on to house more that 1,600 or 1,700 people and that would be in single cells.

The institution is probably best described as three prisons, K block, L block, and J block, which share common support facilities. K block and L block are virtually identical and each consists of a long, spinelike corridor with eight cell blocks off the corridor, a gymnasium at one end of the corridor, and access to the rest of the facility at the other end of the corridor. The cell blocks are numbered consecutively K - 1 through K - 8 and L -1 through L - 8 and each cell block has two upper and two lower cell ranges with twenty cells to a range. Some of the cell blocks have inner cell ranges in which the outer wall of the cell block is not used as a wall of the cells in the range. The rest of the cell blocks have outer cell ranges in which the outer wall of the cell block does constitute a wall of the cells in the range. In such cell blocks, each cell has a window that can be opened or closed by the occupants of the cell. A guard's console with controls for automatically closing and opening all the cells or any combination of them is located just inside the door from the corridor to the cell block. At the end of each cell range closest to the guard console is located a shower stall.

K block and L block corridors intersect each other at a 90 $^{\circ}$ angle. A third corridor near this intersection leads to J block, a smaller and more secure version of K and L blocks. J block corridor only has four cell blocks

off of it (J - 1 through J - 4) and at the end of the corridor is a visiting room rather than a gymnasium. J block is used to house inmates on death row (who are single celled) and inmates who have been placed in long - term administrative isolation for various serious disciplinary violations (some of whom are double celled). Each of the four cell blocks has four cell ranges as described above.

Located near the intersection of J, K and L blocks are the library and the school facilities. The library is a modern, well - lit room, stocked with some 25,000 volumes. Included is a law library.[2] Nearly every expert witness who testified in this case found the library to be superior in quality and quantity. The school facilities are located above the library and at the time of trial consisted of eight classrooms which were being remodeled to add additional classroom and office space.

A corridor from the intersection of J, K, and L blocks leads to the rest of the facilities. Along this corridor are located two chapels for holding religious services, the commissary, a barber shop, the dining rooms and kitchen and workshops. The workshops contain the prison laundry, a machine shop, a shoe factory, a sheet metal shop, print shop, sign shop, and small engine repair shop.

Finally, another corridor leads to the entrance of the institution. Located off this corridor are the administrative offices and staff dining room, a large visiting room, the medical and dental facilities, including a hospital ward with twenty single isolation cells and two ten-bed wards and the so-called merit block (D-2) where inmates who have achieved honor status are housed. The merit block has eighty cells and is presently single celled.

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[2] The plaintiffs do *not* claim that the law library is objectively inadequate. It *is* quite adequate. The plaintiffs' claims rest on "unavailability."

This complex is surrounded by two twelve - foot high, barbed wire topped, chain link fences and eight guard towers. Also, inside the fence are an outdoor recreation field, outdoor visitation area, and tomato garden. On the outside of the fence is a patrol road and also located outside the fence is a power plant and warehouse for the institution.

Shortly before the trial of this case, the plaintiffs moved that the Judge who presided at this trial "view the premises." That motion was granted and, in the company of a law clerk and with practically no notice, the facility was toured for approximately four hours just a few days before trial. The time expended was ample, since we are no stranger to Lucasville by reason of prior inspections and one "on the spot" civil rights case hearing. One of the difficulties of a "view" in a bench trial is the extent to which the view of necessity becomes evidentiary. Under that heading — the facility is new and that, of course, is a plus; as such places go, it is not lacking in color and most such places surely are; generally speaking, it is quite light and quite airy, etc.

II. The Inmates

At the time of trial, SOCF contained some 2,300 inmates. Sixty - seven percent of the inmates were serving either life or first degree felony sentences.

SOCF began receiving inmates in late 1972. Many of the inmates were transferred to SOCF from the Ohio Penitentiary. The closing of the Ohio Penitentiary [3] and the transfer of its inmates to SOCF did not take place overnight. The inmate population figures for SOCF have, therefore, exhibited an increase from the very first year

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[3] The Ohio Penitentiary continues to operate today as the Correctional Medical and Reception Center (CMRC), a central medical facility for all Ohio prisons.

of its operation. In more recent years however, the number of commitments by Ohio courts had greatly increased and the inmate population figures at SOCF (as do those of the entire Ohio system) reflect that increase. Sometime in 1975, the administration began double celling inmates at SOCF. The inmate population figures since 1975 are as follows:

January, 1975	1,320
January, 1976	1,954
January, 1977	2,202
Trial Date (May 23, 1977)	2,313

III. The Cells

Counting the medical ward, merit block and J, K, and L blocks, SOCF has 1,660 cells. The medical ward (D - 1) accounts for forty of these cells with two, ten - bed dormitories and twenty outside cells.

The remaining 1,620 cells are either inside or outside cells. There are 660 inside cells and they are located as follows:

Merit Block (D - 2)	80
J - 1 through J - 4	260
K - 1 through K - 4	320

Inside cells measure 6' x 10'6" x 9' high, are windowless, and consist of three solid walls with the fourth wall barred and serving as an entrance.

At the time of trial, all the cells in K - 2 and K - 3, most of the cells in K - 4, and some of the cells in J - 4 were doubled.

Cell blocks D-2 (merit) -80, K-1 (protective custody-max)-80, J-1 (Super max)-65, J-2 (disciplinary isolation) -65, and J-3 (death row)-60 are single celled. There are, therefore, about 350 cells in "undoubled" blocks.

There are 960 outside cells and they are located in K - 5 through K - 8 and L - 1 through L - 8. Outside cells measure 6' 6" x 10' 6" x 9' high and are otherwise similar to inside cells, except that they each have a window which can be opened or closed by the occupants. Nearly all of these cells are doubled.

All cells, with the exception of those in the medical ward, contain the following furniture and equipment: one cabinet - type night stand, one wall cabinet, one wall shelf, one wall mounted lavatory with hot and cold running water and steel mirror, one china commode which is flushed from inside the cell, one wall mounted, built-in radio, one heating and air circulation vent located near the ceiling, one twenty - six inch lighting fixture and one bed, 36 inches by 80 inches. In those cells which are doubled, a second bed has been added, bunk style, to the wall above the original.

There are at least three methods of "rooming" prisoners that have been referred to in the testimony in this case. One is the dormitory method, involving a number of beds, etc, in one large room. At the other end of the pendulum is one prisoner per cell of adequate size. The third method is doubling up in the cells. The dormitory method is the most objectionable. The preferable or ideal is one prisoner per cell.

Each cell block at the facility contains as a "built-in" adjunct a day room. By "built-in" we mean the placement is such that one may go from any of the ranges to the day room without leaving the block; or stated otherwise, passage from a cell to the day room does not involve opening the block door, nor does it involve walking into the corridor. The day rooms are in a sense part of the cells and they are designed to furnish that type of recreation or occupation which an ordinary citizen would seek in his living room or den. Day rooms provide a place where a prisoner may go to get out of the confines of his cell and interact with different people, etc. These day rooms vary in size. Each day room contains

a wall mounted television, four or five card tables, and a varying number of chairs ranging from thirty to sixty. Inmates who are celled in K - 5 through K - 8 and L - 1 through L - 8, who are not at meals, recreation, the library, jobs, school, the visitors rooms, or showers, and, except between the hours of 9:30 p.m. and 6:30 a.m., may divide their time between their cells and these day rooms. During the daytime hours there is a ten minute day room break every hour on the hour in which the day room and the cells in the block are unlocked and inmates may return to their cells from the day room or vice versa during that period.

The plaintiffs have claimed in this case that the double celling and the increase in population has rendered the day rooms functionally useless. The assertion rests on a number of subsidiary assertions, such as, in the same breath, that now they are used by 80 to 120 people at a time, whereas, they used to be occupied by about 40 at a time, and "some inmates do not use the day rooms due to the overcrowding." At the worst, the day room availability has decreased 50%, but even that is speculative. The most this Court could find as a fact based on the evidence in the case is that there are infrequent occasions during which the day rooms are not as available as they would be if single celling were the 100% rule. That reduction is not significant in any respect.

IV. Inmate Classification

An inmate's classification determines where he will be housed at SOCF. The regulations governing the initial classification and reclassification of inmates were admitted as exhibits in this case and have been reviewed by this Court. According to the regulations, a Reception Center Classification Committee (and later an Institution Classification Committee) attempts to determine the needs and requirements of an inmate by considering

such information as staff reports, presentence investigations and educational and vocational testing reports and then assigns the inmate to appropriate custody, work or training programs.

Upon arrival at SOCF, all new inmates are housed in K - 5, which is also known as the Receiving Block, pending classification by the Institution Classification Committee. This process usually takes a couple of weeks. Inmates from K - 5 do not eat in the dining room at the same time as other inmates and generally do not mingle with general inmate population.

After being classified, an inmate is assigned to another cell block. Cell blocks K - 6 through K - 8 are presently used to house inmates who have trade or vocational assignments. Cell blocks L - 1 through L - 8 house, for the most part, inmates who are attending school or have jobs. Cell block K - 3, and part of K - 4, house inmates who choose to be "voluntarily idle." Cell block K - 2 is designated "limited activity" and houses those inmates who have requested protective custody, but other than that request have not substantiated a need for protective custody. Cell block K - 1 houses inmates in full protective custody. Cell blocks J - 1, 2, and 4 house inmates in administrative isolation for disciplinary reasons. Cell block J - 3 and a few cells in J - 2 constitute death row. Cell block D - 2 is the merit block where inmates who have attained honor status are housed.

As a direct result of this classification system, the cell block in which an inmate is celled establishes, in large part, the amount of time in which an inmate must be locked in his cell with a cellmate. For example, inmates celled in cell blocks K - 6 through K - 8 and L - 1 through L - 8 have to be locked in their cell with their cellmate only from around 9 p.m. to 6:30 a.m. During the rest of the day, these inmates could be eating meals in the dining room, at recreation (three times per week), at the library (four times per week), at their particular job or school, in the visitors room, the shower, or in the day

room.

Inmates celling in K - 3, K - 4, and K - 5 because of their idle or receiving classification do not have as much opportunity to be out of their cells as those inmates in K - 6 through K - 8 and L - 1 through L - 8.

Furthermore, all the inmates in K - 3 and K - 4, as well as K - 6 through K - 8 and L - 1 through L - 8, are permitted one weekly visit to the commissary, can attend the weekly movie shown in the gymnasium, and can attend religious services in the chapel.

Inmates celled in protective custody (K - 1) and limited activity (K - 2) have recreation in their respective day room and are permitted to shower. With those exceptions or unless escorted by a guard (such as to the visitors room), inmates in K - 1 and K - 2 spend all of their time locked in their cells. As noted, K - 1 is single celled and no one is placed in K - 1 or K - 2 who does not request it.

Similarly, inmates housed in the four J blocks spend nearly all their time locked in their cells.

At the risk of complicating, but in an effort to simplify — since permissible "out of cell time" is of such import in a double celling case — the evidence in this case establishes (out of 1,620 cells — the 40 hospital cells being excluded):

I. A total of 340 are single celled, including D - 2, 80; K - 1, 80; J - 1, 20; J - 2, 80 and J - 3, 80. Leaving a total remaining involved of 1,280 cells.

II. The occupants of 960 of those cells, K - 6, 80; K - 7, 80; K - 8, 80; L - 1, 80; L - 2, 80; K - 3, 80; L - 4, 80; L - 5, 80; L - 6, 80; L - 7, 80; L - 8, 80; D - 2, 80; are on school, or work,or merit status and are out of their cells (or at least have that option) some ten hours a day.

III. The occupants of the remainder (320 cells) are "out of cells" variably as follows:

K - 2 Limited Activity (semi - protective)	6 hrs. weekly
K - 3 Idle	4 hrs. weekly
K - 4 Administrative Isolation	2 hrs. weekly
K - 5 Receiving	4 hrs. weekly

(K - 5 are also "out of cells for meals" and the "tour" in K - 5 is a brief one, about 2 weeks.)

Inmates in K - 2 and K - 3 are there by "choice" (at least to some degree). Inmates in K - 4 are there as a result of claimed rule infractions and following a plenary hearing.

V. Inmate Lifestyle

As the aforementioned indicates, about 75% of the inmates of SOCF who are double celled have the choice of spending a considerable amount of their time outside of their cells. We turn now to examine the effect that double celling has on other aspects of the inmates' lifestyle.

— Food —

The plaintiffs have claimed that double celling has overcrowded SOCF and resulted in the inmates' present quantity and quality of being "grossly inadequate." To prove this allegation the plaintiffs presented three lines of evidence: Some inmate testimony that food portions have decreased since double celling began,

a New York prison expert who testified that the lowest amount he ever knew spent for food for inmates in New York was $1.70 each per day, and the food budget for SOCF for 1975, 1976 and for the first part of 1977 (pex. 26). These figures show that $680,718.00 was expended for food in 1975, $1,140,429.00 in 1976, but only $233,370.00 for the first calendar quarter of 1977.

The defendants presented testimony that the food was more than adequate in quantity and quality and that much attention was paid to making certain that it was served hot. The testimony established that the discrepancy in the budget figures was due to a new "portion control" program instituted in all Ohio prisons. Furthermore, the defendants pointed out that not reflected in the budget figures was food supplied by other Ohio prisons, such as milk from the London Correctional Institution's dairy farm.

None of the inmates who testified or appeared during the trial of this case appeared in any way undernourished or malnourished. The guards, as well as the administrative personnel, eat certain of their meals at the prison in a small cafeteria. The prepared food in that cafeteria comes from the same kitchen which serves the prisoners' dining rooms. Generally speaking, what will be served to the inmates as an evening meal is served to the guards and administrative personnel as a noon meal. No inordinate amount of food is garbaged. The portions are adequate. The kitchens and the dining rooms are clean. There is evidence that in one month, April of 1976, some 174 mice were caught in the area of the kitchen and dining rooms. That is an isolated instance and, under the evidence in this case, does not establish that the condition was present with any degree of permanence. The evidence is more consistent with a temporary rodent problem.

We do not mean to imply that the meals are the equivalent of home - cooked ones in any sense, but on the

other hand, we certainly find them to be adequate in every respect and there is no indication whatsoever that prisoners have been underfed or that food facilities have been taxed by the prison population.

— Air —

The plaintiffs have also claimed that double celling has made the cell blocks "humid and stuffy with stale air" and noise levels "intolerable." Every cell has a heating and air circulation vent and many have windows. The plaintiffs' own expert testified that he noticed no odors and that the cell blocks were "too quiet." (While the outside temperature exceeded 90° during this Court's inspection, the temperature inside the corridors and cells remained quite comfortable. No excessive noise was noted.) It is found that the institution is not unusually stuffy or humid. The ventilation system is adequate. Offensive odors are not present to any significant degree.

— Visitation —

SOCF is one of the few maximum security prisons in the entire country which permits contact visitation for all inmates. The plaintiffs' claim that the visitation facilities have been "overwhelmed" because of double celling was not proven at trial, i.e., no evidence was produced to substantiate it.

— Lawless Atmosphere —

Another of the inmates' claims was that double celling has resulted in overcrowding that has produced a "lawless atmosphere" at SOCF that the guards can not control. The statistics produced to establish an increase in violence have been almost worthless to this Court because of several differences in record keeping. This

Court does find that the plaintiffs have established that violent incidents have increased as the inmate population has increased. The plaintiffs have not established that violent incidents have increased out of proportion to the increase in inmate population.

The testimony concerning the amount of guards needed at SOCF was quite conflicting. Two guards testified for the plaintiffs that more guards were needed. One of defendants' experts testified that SOCF had too many guards.

This Court accepts the testimony of plaintiffs' expert from New York, Adam McGuillan, that a good "acceptable" inmate to guard ratio is seven to one. The inmate to guard ratio at SOCF is presently 6.13 to one, well within the acceptable ratio.

— Plumbing, Lighting, Law Library —

No evidence was presented which would demonstrate that the plumbing, lighting, or law library facilities are inadequate to meet the needs of the increased population.

As has been noted before, the plaintiffs' complaint with respect to the law library is not that it is inadequately equipped or booked. The claim is that access is denied. There was no evidence produced at all with respect to denial of access to the general population. The claim really boils down to access being denied to inmates in protective or disciplinary status. However, as applied to such inmates, law books are brought to the blocks involved on the request of inmates. There is no evidence at all that any of such requests were unreasonably denied. That entire situation would obviously exist whether the cells were double occupied or single occupied.

— Rehabilitation — Jobs —

The plaintiffs further claim that overcrowding due to double celling has reduced an inmate's opportunity to rehabilitate himself by lessening his chances of receiving educational or vocational training or a meaningful job. The statistics provided to this Court in plaintiffs' exhibits 24 and 25 are as follows:

	Inmates Working	Inmates School Full - Time	Inmates Idle
January, 1975	698	197	201
January, 1976	855	345	464
January, 1977	1,154	430	281
May 2, 1977	1,150	426	360

These figures do not include inmates in administrative isolation, death row, protective custody, merit status, or absent with leave (a total of 355 inmates as of May 2, 1977).

The plaintiffs argue that the increase in the number of inmates listed as working is not due to an increase in the amount of jobs as much as it is due to a "watering down" of the jobs that exist by assigning more inmates to each job than are necessary to complete the job. Thus, one inmate testified that he only actually worked twenty minutes per day to complete his job. Other inmates, such as food service workers, work closer to five or six hours each day. In any event, this Court finds that the testimony that there are not enough jobs to go

around is credible, [4] as is the testimony to the effect that many inmates assigned to jobs work only an hour or so a day.

— Schools —

There is no complaint about the classrooms or the equipment or library facilities insofar as schools are concerned. The classrooms are light, airy, and well equipped. Nor is there any complaint that access to schooling has been denied. About one out of six inmates opts to go to school and that was the percentage at the time of single celling, and still is. Classroom attendance involves approximately 10 hours a week and inmates in school have access to the library. There is no evidence that any inmate, ready, able, and willing to receive schooling has been denied the opportunity. There is evidence and it is found that the opportunity has been substantially delayed since double celling. Double celling has obviously interfered with studying since studying is left for the cells and day room.

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[4] Inmates who work receive twenty dollars a month. Of this twenty dollars, eight dollars is placed in a fund to be given to the inmate upon his release from incarceration. The remaining twelve dollars may be used by the inmate at the commissary. Inmates who do not work and are indigent receive personal hygiene items (razors, soap, toothbrushes, etc.) at the expense of the state. Indigent inmates also receive free postage and paper for one letter per week as well as free postage for all court related mail.

— Medical, Dental and Psychological —

At least one registered nurse and several nurses are on duty full time. A prisoner seeking medical assistance obtains a sick call pass from the nurses. Sick call is held every day for the general population. It is held only once a week in the so - called "up - tight" blocks (isolation, disciplinary, idle, protective custody). That means that except for emergency situations, a prisoner in an up - tight block has an opportunity only once a week to see a nurse who comes around to that block. The decision whether an inmate will be seen by a doctor is made by a nurse and following the request of a guard and that is true both in the uptight and general population blocks. The facility has an arrangement with one physician who is a qualified one and has considerable education, training and experience in both the general practitioner and surgical field. Sick calls are held by him at the facility at regular intervals at least twice a week, and the same doctor who lives and offices near the institution is available for emergencies at all times. There is a hospital close by at Portsmouth, Ohio which has been used for emergency purposes and many serious cases are referred to the Correctional Medical and Reception Center at the old Ohio Penitentiary at Columbus, Ohio. There is no credible evidence in this case based on which one could conclude that the authorities were indifferent to the medical needs of the inmates. Each week the doctor does see a substantial number of prospective patients and also those receiving ongoing treatment, and he does issue such prescriptions and orders and directions as he considers medically necessary. Those prescriptions are daily provided for from an adequate pharmacy. There is no substantial evidence that the directions are not followed as a general rule.

There is evidence in the case of a denial of what inmates consider to be appropriate medical treatment and there is evidence of isolated instances of failure to provide medical attention on request of a guard. The Medical staff has not been increased since the days of single celling. The situation does, of course, leave much to be desired, but cannot be described as out of hand or the result of indifference.

With respect to dental — there was a full - time dentist in the employ of the institution from April of 1976 to April of 1977. The dentist who occupied that position left and since has been replaced. Both at the time he came on and within a month after he left, a substantial waiting list and backlog of dental needs built up. There are several dental paratechnicians recruited and trained from the dental staff. When the then new dentist came on in April of 1976, there were approximately 100 people waiting to see him and in mid-May of this year, the backlog before the arrival of the new dentist was as follows:

> There were approximately 170 people waiting to get dentures of one kind or another;
> Approximately 140 people waiting to have teeth pulled and several hundred awaiting cleaning and cavity attention.

These temporary situations are, of course, intolerable. On the other hand, the evidence indicates that one dentist with the para - assistant is able ordinarily to cope with the needs of the population to the extent that those needs could be described as pressing. That is not to say that a single dentist can do anything but deal with immediate problems. He cannot. For instance, there is no time at all to formulate treatment plans for patients and carry them out. Again, there is no evidence that the authorities are indifferent to the needs.

Included in the staff at the facility are a psychologist and a social worker. The staff has not been increased since the double celling. The services rendered in that area have been substantially denied to a number of inmates due to the double celling.

VI. Violence

The evidence in this case relating to double celling and violence is divided into three categories: (1) Expert, (2) Guard and inmate, and (3) State prison management and its records.

— Expert —

The experts were all in agreement - as is everybody - that single celling is desirable. Double celling involves, of course, loss of privacy and close contact with another person involving an increase in tensions and frustrations. That is accented (1) by the fact that the inmate has little, if anything, to say on the choice of a cellmate, and (2) by the fact that a substantial number of the inmates are victims of some form of emotional or mental disorder. One expert testified that in a maximum security prison of any size some 15% of the inmates may be expected to be schizophrenic and that that type is particularly prone to violence engendered by "close quarters" and "frustrations". The prison psychologist and chaplain both testified that double celling had led to increasing tension, both proportionate and geometric, and agressive and antisocial characteristics.

— Guards and Inmates —

Introductorily, the credibility of the inmates and the two guards who testified for the plaintiffs is unusually difficult of assessment. The plaintiffs' main factual wit-

nesses consisted of the five inmates and one guard, Johnson. According to Johnson, the conditions with respect to double celling are intolerable. He testified that two men cannot move at the same time in a double cell (that is not so); that in one month he had four stabbings, two fights and a rape in a day room since double celling and none before; that nearly all the prisoners carry weapons to protect themselves; that in his cell block there were two fights a week between cellmates and two rapes a month vs. scarcely any stabbings or rapes before and alot less fights; that extortions and body sales were rampant now generally and scarcely occurred at all during single celling; that most of the violence occurred between cellmates; that one guard in a "general population" block could maintain order if the block were single celled but that with double celling it is "impossible" to do so; that a guard can establish "rapport" in a single celled block but not in a double celled one; that the day rooms are now overcrowded and it is impossible to maintain order., etc. Johnson came under the heading of "protesting too much." He has been suspended several times and at the time of trial was the subject of some disciplinary proceeding. He failed to report most, if not all, of the incidents of violence he testified to - giving as the reason they were not to be reported until verified or confirmed with the names of the participants and citing the difficulties in getting one inmate to name another. Based largely on his demeanor on the stand this Court does not regard Johnson as a credible witness.

The difficulty in assessing the credibility of the inmates' testimony is pointed up by this Footnote 3 to the Plaintiffs' request for findings:

> 3/ The refusal of inmates to "snitch" on the witness stand and name victims and predators they observed is understandable. "Snitching" is the act of reporting criminal behavior to the administration. The testi-

> mony shows that if it becomes known that an "inmate snitched" his life was not worth a plug nickel ***

Thus, while the inmates testified at length to violence, increase in violence, extortions, rapes and body sales and to the necessity of a substantial number of new inmates seeking protective custody or placing themselves under the protection of a "man" — all, when asked on cross - exam, declined to name names, etc. For reasons best known to themselves the defendants did not seek a Court order to answer. The point is that the inmate testimony was conclusory and general and not of much help from a credibility point of view.

We have no doubt that to a certain degree the criminal activity described by the prisoners does exist to a certain extent at Lucasville and, for that matter, in all prisons. The mere classification of a prison as "high security" implies that the overwhelming percentage of its inmates are there because of the commission of crimes involving violence directly (such as homicides) or courting it (such as burglary or larceny) and the fact of the matter is, as the recidivism rates show, that the inmate is likely to repeat. The problem posed by this case is simply whether double celling, as such, accounts for it.

—Prison Management and Its Records—

It has now been about two years since double celling has been in practice, to some and an ever-increasing extent, at Lucasville. The prison physician, who has been there throughout most of that time and would be called on to administer to any inmate seriously affected by violence, testified that there has been no increase other than what one would expect from increased numbers. He was joined in that testimony by the Superintendent and other prison authority. More importantly, the Regulations of the Department of Corrections of Ohio require the written reporting of any acts of violence. Such reports have been

made and are in evidence as plaintiff's exhibits 28, 29 and 30. These records are in detail and bespeak credibility.

On a percentage of incident rate (obtained by dividing the population number into the number of incidents) and on a quarterly basis, there is no substantial difference between occurrances during single celling and double celling. Thus, the "Stabbings" during the first and second quarters of 1975 (single celling) were respectively .22% and .40%; during the last quarter of 1976 and the first quarter of 1977 (double celling) the figures were .33 and .27. For "Fights" the comparable figures were 1.05 and .47 vs. .66 and .87. For "alleged — self inflicted" the comparable figures were .22 and .0 vs. .28 and .04.

We accept these figures and conclusorily find that there has been no increase in violence or criminal activity increase due to double celling; there has been due to increased population.

CONCLUSIONS OF LAW

1. "Traditionally, federal courts have adopted a broad hands - off attitude toward problems of prison administration. In part this policy is the product of various limitations on the scope of federal review of conditions in state penal institutions. More fundamentally, this attitude springs from complementary perceptions about the nature of the problems and the efficacy of judicial intervention. Prison officals are responsible for maintaining internal order and dicipline . . . and for rehabilitating, to the extent that human nature and inadequate resources allow, the inmates placed in their custody. The Herculean obstacles to effective discharge of these duties are too apparent to warrant explication. Suffice to say that the problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible of resolution by decree. Most require expertise, comprehensive planning, and the com-

mitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government. For all of those reasons, courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform. Judicial recognition of that fact reflects no more than a healthy sense of realism. Moreover, where state penal institutions are involved, federal courts have a further reason for deference to the appropriate prison authorities.

"But a policy of judicial restraint cannot encompass any failure to take cognizance of valid constitutional claims whether arising in a federal or state institution. When a prison . . . practice offends a fundamental constitutional guarantee, federal courts will discharge their duty to protect constitutional rights." *Procunier v. Martinez*, 416 U.S. 396, at 404, 405, 94 S. Ct. 1800, at 1807, 40 L. Ed. 2d 224 (1973).

2. The "cruel and unusual punishment" clause of the Eighth Amendment is "progressive and is not fastened to the obselete but may acquire meaning as public opinion becomes enlightened by humane justice." *Weems v. United States*, 217 U.S. 349, 30 S. Ct. 544, 553, 54 L. Ed. 793 (1910).

[2] 3. Confinement itself within a given institution may amount to a cruel and unusual punishment where the confinement is characterized by conditions and practices so bad as to be shocking to the conscience of a reasonably civilized people. *Holt v. Sarver*, 309 F. Supp. 362 (E.D. Ark. 1970), aff'd 442 F. 2d 304 (8th Cir. 1971).

[3] 4 Under the Fourteenth Amendment, "a prisoner retains all the rights of an ordinary citizen except those expressly, or by neccessary implication, taken from him by law." *Coffin v. Reichard*, 143 F. 2d 443,

445 (6th Cir. 1944).

5. The courts have a duty to protect prisoners from unlawful and onerous treatment of a nature that, by itself, adds punitive measure to those legally meted out by the court. (From *Sands v. Wainwright*, 357 F. Supp. 1062 (M.D. Fla. 1973), vacated on other grounds 491 F. 2d 417 (5th Cir. 1974).)

6. The foregoing principles are well and authoritatively established and in line with them various federal courts, in the last seven or eight years, have critically examined the custodial institutions of many states and cities in an effort to ascertain and, if necessary, protect inmates from unconstitutional treatment while incarcerated. The question is constantly stated as one of ascertaining the "totality of the circumstances" of the particular case and then inquiring into whether the totality as determined is intolerant or shocking to the conscience, or barbaric or totally unreasonable in the light of the ever changing modern conscience. Since the "totality " of the circumstances differ from case to case, it is difficult to find "controlling" authority.

7. For example, one of the first circumstances involved in the inquiry is whether the inmates involved are convicts or detainees. The Second Circuit, in a double celling case, *Brooklyn v. Malcolm*, 520 F. 2d 392 (1975) emphasized at the outset that —

> Here we are concerned only with the confinement of pretrial detainees and not convicted inmates.

Malcolm was a "due process" rather than "Eighth Amendment" case. However, there does not seem to be any difference between the two in the sense that the limitations imposed by both seem, under the decisions,

fairly much the same.

8. Many prior prison condition cases involving double celling or overcrowding did not involve maximum security convicted felons but rather county or city jails housing pretrial detainees or misdeameanants. *Brooklyn v. Malcolm, supra; Ambrose v. Malcolm,* 414 F. Supp. 485 (S.D.N.Y. 1976); *Rhem v. Malcolm,* 377 F. Supp. 995 (S.D.N.Y.), *aff'd,* 507 F. 2d 333 (2d Cir. 1974); *Inmates of Suffolk County Jail v. Eisenstadt,* 360 F. Supp. 676 (D. Mass. 1973), *aff'd* 518 F. 2d 1241 (1st Cir. 1975); *Jones v. Wittenberg,* 323 F. Supp. 93 (N. D. Ohio 1971), *aff'd sub. nom. Jones v. Metzger,* 456 F. 2d 854 (6th Cir. 1972). *See also, Rodriguez v. Jimenez,* 409 F. Supp. 582 (D.P.R.), *aff'd* 537 F. 2d 1 (1st Cir. 1976). Other cases involved jail structures which were antiquated and in which the plumbing, lighting, heating, ventilation, sanitation, and noise levels bear no resemblance to SOCF at all. *Rodriguez v. Jimenez, supra,* (jail built in 1808); *Inmates of Suffolk County Jail v. Eisenstadt, supra,* (jail built in 1848); *Jones v. Wittenberg, supra,* (jail built in 1895); *Hamilton v. Schiro,* 338 F. Supp. 1016 (E. D. La. 1970) and *Hamilton v. Landrieu,* 351 F. Supp.549 (E. D. La. 1972) (prison built in 1929). *See also, Pugh v. Locke,* 406 F. Supp. 318 (M. D. Ala. 1976); *Holt v. Sarver, supra.* Still other cases involved dormitory or barracks housing for inmates. *Gates v. Collier,* 423 F. Supp. 732 (N.D. Miss. 1976); *Holt v. Sarver, supra.* The failure to provide basic medical treatment to inmates is a condition found in other cases which is not present in this case. *Rodreguez v. Jimenez, supra; Pugh v. Locke, supra; Costello v. Wainwright,* 397 F. Supp. 20 (M.D.Fla. 1975), *aff'd,* 525 F. 2d 1239 (5th Cir. 1976); *Jones v. Wittenberg, supra,* and 73 F.R.D. 82 (N.D.Ohio 1976); *Hamilton v. Schiro, supra.*

9. On the question of inmate violence, Courts have

recognized that probably no prison is a "safe" place to live [5] and that incidents of violence, including homosexual attacks, are going to occur in the best run prisons. *See, e.g., Finney v. Hutto*, 410 F. Supp. 251 at 263 (E.D. Ark. 1976). It is simply impossible to stamp out crime and violence in a place where one is the most apt to expect it — a maximum security prison. For one reason the authorities are simply unable in most incidents to ascertain the identity of the agressors. This fact of life does not, of course, excuse prison officials from using ordinary care for the safety of inmates from violence from other inmates. The defendants have not failed to use ordinary care for inmate safety. A sufficient number of guards has been provided. Homosexuality, enforced and consensual, extortion and criminal activity have increased with double celling, but only proportionally and not geometrically.

[4] 10. With respect to inmate privacy, this Court is aware of no authority holding that convicted maximum security inmates have a constitutional right to privacy or private living quarters — nor have we been cited to any.

[5] 11. Medical and Dental. The Supreme Court has recently reaffirmed: "These elementary principles establish the government's obligation to provide medical care for those whom it is punishing by incarceration . . . ' it is but just that the public be required to care for the prisoner, who cannot, by reason of a deprivation of lib-

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[5] One witness testified that in the same period of time during which two inmates were killed at SOCF, 164 inmates and 16 staff members were killed at another state's maximum security prison of comparable size to SOCF.

erty, care for himself.' " *Estelle v. Gamble*, 429 U.S. 97, 97 S.Ct. 285, 290. 50 L.Ed. 2d 251 (1976). The state may not be indifferent to but must provide basic care. And that, of course, is true of dental care. The record does establish that the inmates' State has provided an adequate medical staff consisting of a physician and several nurses; that the doctor holds at least semi - weekly sick calls; that he is subject to and does respond to emergency calls; that patients have been treated, hospitalized at the location, and on occasion as required taken to local or Columbus hospitals. The constitutional requirements of basic medical care and concern for the inmates have been met.

That cannot be said of the dental care situation. There have been two occasions during which the defendants have failed to provide adequate dental care and each of them has occurred when the state - provided dentist resigned and there existed a vacancy pending obtaining a successor. At the present time a competent dentist is adequately serving the facility and whatever relevancy the previous deficiency had to "double celling" has passed.

[6] 12. It is our conclusion overly and on balance that the double celling at Lucasville is unconstitutional. The conclusion is based on these reasons.

A

The inmates are "long term." That can only accent the problems of close confinement and overcrowding.

B

The rated capacity of the installation is 1,600. It was designed to hold that number. Overly, it is now holding some 38% more people than the designers and builders intended it to. One method the Courts have used rather consistently to gauge overcrowding has been to compare the actual population with the rated capacity. Overcrowding necessarily involves excess limitation of general movement as well as physical and mental injury from long exposure. Remedial decrees have issued limiting to "design capacity." *See Miller v. Carson*, 401 F. Supp. 835 (M.D. Fla. 1975); *Ambrose v. Malcolm*, 414 F. Supp. 485 (S.D.N.Y. 1976). In the latter case, the Court said:

> " . . . it is manifest that the defendants may not house detainees in the dormitories of (the prison) in numbers significantly in excess of its rated capacity. Certainly this is true where, as here, the defendants have presented no evidence as to why the capacity set by the defendants themselves — or their predecessors — should not control, subject only to such variation as the record in this case may justify." (at 494)

"Rated capacity" or "design capacity" was directed by remedial decree in *Taylor v. Sterrett*, 344 F. Supp. 411 (N.D. Tex. 1972). See also, to the same general effect: *Hamilton v. Schiro*, 338 F. Supp. 1016 (E.D. La. 1970); *Pugh v. Locke*, 406 F. Supp. 318 (M.D. Ala. 1976).

C

The cells were designed, built and rated to house one man. The square footage in each is, for our purposes,

approximately 63 square feet — meaning that double celling reduces the square footage of living quarters per man to something in the neighborhood of 30 - 35 feet at best.

One court has said flatly, " . . . 50 square feet of living space is the minimal acceptable requirement to comport with the Constitution." *Gates v. Collier*, 423 F. Supp. 732, 743 (N.D. Miss. 1976). That conclusion is supported by the testimony in this case and otherwise.

The American Correctional Institution has concluded that 75 square feet is the minimally acceptable standard.

The National Sheriffs Assn. Handbook on Jail Architecture (1975) asserts that single occupancy detention rooms should average 70 - 80 square feet (at pg. 62).

The National Sheriffs Assn. Manual on Jail Administration (1970) suggests that in multiple celling 55 square feet of space per occupant is mimimal.

The National Council on Crime and Delinquency Model Act for the Protection of Rights of Prisoners (1972) concludes that "not less than fifty square feet of floor space in any confined sleeping area" should be provided as the minimal.

The Report of the Special Civilian Committee for the study of the United States Army Confinement System (1970) indicates that the Army standard in 1969 was 55 square feet and the Army, not known for "coddling," adheres to that.

All of the above conclusions deal with "sleeping space" and contemplate additional space for other purposes, such as day rooms. All are relatively contemporary. All indicate the "contemporary" standard. *Weems. See also, Pugh v. Locke, supra,* requiring single occupancy isolation cells of 60 square feet; *Martinez v. Jimenez*, 409 F. Supp. 582 (D.P.R. 1976) "not less than 10 x 7."

In the *Gates v. Collier* case, *supra,* the Court observed with respect to the standard of 50 square feet of living (sleeping) space per man, "No one takes issue with the basic requirement for human decency and this Court

holds a failure to achieve that minimal standard contravenes the Eighth Amendant prohibiting cruel and unusual punishment."

D

At the best a prisoner who is double celled will spend most of his time in the cell with his cellmate. A substantial number must so spend all but six hours a week and another substantial number all but four hours a week.

E

The double celling involved here began almost two years ago and now involves some 1,400 people. In other words, this is not a situation in which the *present* need of and for single cells has just been brought about through a reversal in trends. As we have pointed out, the prison population in the United States declined steadily in the early to middle seventies and was relatively stable until 1972. Since then it has grown some 39 or 40% and 1976 was the largest single year on record. Constitutionality and unconstitutionality are relative or elastic terms and we certainly are not concluding that all double celling in any 60 square foot cell is beyond the ambit. The State need not contemplate a trend reversal. But the present trend has continued for four years — the double celling at Lucasville has done nothing but increase. It is in that background of relative permanence that the conclusions herein are reached. Double celling in 60 - foot cells is undoubtedly permissible as a temporary measure, but we deal not with anything temporary here.

REMEDY

[7] At this time and on this present record, this

Court is not in any position to do aught but conclude and declare that double celling at Lucasville is federally unconstitutional.

That conclusion (if it be eventually determined to be correct) may require the State to build additional facilities and to raise the funds necessary to do so. This Court certainly has no power to direct that on the present record and it is problematical whether a Court would ever be in a position to do so.

As the Court said in *Brooklyn v. Malcolm*, 520 F. 2d 392 (2nd Cir. 1975), "we, can, however, order the release of persons held under conditions which deprive them of rights guaranteed by the Constitution unless the conditions are corrected within a reasonable time."

The plaintiffs urge that the defendants should be ordered to "single cell" or "release" right now. We rather doubt that the State is, overnight, prepared to move any substantial number of inmates from Lucasville and "single cell" them elsewhere. A "single cell" or "release" order would be clear abuse of discretion on the present record. On the other hand, the State must proceed with reasonable dispatch to formulate, propose and carry out some plan which will terminate double celling at SOCF.

Within ninety (90) days from the filing hereof, the defendants may propose and file herein such a plan. A date for hearing thereon will be thereupon assigned. No order will issue at this time. Jurisdiction is retained.

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FILED
March 21, 1978

No. C - 1 - 75 - 251

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

KELLY CHAPMAN, et al.,

Plaintiffs

vs.

JAMES A. RHODES, et al.,

Defendants

MEMO

An evidentiary hearing has taken place in this case on the alternative plans to terminate double celling at Lucasville (as submitted by the defendants) and on the "incremental reduction" suggestion of the plaintiffs.

The defendants have proposed five alternate plans. Alternates numbered 4 and 5 are contingent upon further action by the Ohio Legislature and would require voter approval. At best, either plan would take something in the neighborhood of five years to put into effect and involve too much speculation to merit approval.

Alternative Plans 2 and 3 each would involve the installation of dormitories, one in cell blocks and the other in a gym and shop area. From the evidence at this hearing, as well as at the merit trial of this case, it is clear that "dormitory" facilities are even less desirable than double celling; in other words, those cures are worse than the ailment.

Alternate 1 proposes that double celling be authorized only for cell blocks containing prisoners having either a job or school assignment, or both. The inmates

involved in double celling would be permitted to remain outside these cells between the hours of 6:30 a.m. and 9:30 p.m. All other housing areas would be authorized single cells only. The trouble with this alternate is that it would (or could) lead to an inmate population of 2,500 some 200 more than when this case started. And, as we have seen, the greater the population, the less meaningful the job and school assignments. Alternate 1 has merit to the extent that it deals with the problem of "around the clock" double celling. In the end, however, it would simply add to the overtaxation of the facilities of the institution.

The plaintiffs suggest that this Court simply order the population reduction by the defendants of 100 men per month until the population is reduced to design capacity, by whatever means the defendants select.

When this case was tried, the population was approximately 2,300. It is now approximately 2,000. For working purposes, the design capacity is 1,700. So a reduction of 300 will accomplish the desired result (including, of course, the more meaningful job and school assignments and rehabilitation services).

The Ohio (pertinent) prison population is about 13,000. Lucasville is the only maximum security institution (the classification into which involves considerations of potential danger to society, escape likelihood, etc.). There are three medium security institutions in Ohio, at Marion, Chillicothe and London. Of its total inmate population, 1,400 entered Lucasville in the period 1975 - '76 - '77.

The plaintiffs suggest that the overall population (statewide) could be reduced by commutation, parole, etc. Neither this Court nor the defendants have any control of such matters - nor any business in it. The plaintiffs also suggest the increased use of half - way houses (for suitable inmates of the general population) with the "domino" affect it would have throughout; or the use of local jails. The latter are up to capacity -

or over - already. The former usage would depend on the parole authorities and for that and other reasons it is not feasible to get into that.

The State has not seriously contested the assertion that some of its other correctional institutions are not overpopulated or even full. The State does assert that it could not accomplish a wholesale transfer out of Lucasville of some three or four hundred inmates overnight, or even in a brief period of time. That assertion is reasonable - the State does not contest that a "mix" can reasonably be accomplished in a reasonable time.

Conclusorily - (1) we are satisfied from the evidence that a reduction in population can be reasonably accomplished, (2) that the choice of method (reducing admissions, accelerating transfers, etc.) should be left to the defendants, (3) that a reduction in inmate population of twenty - five (25) men per month beginning in April, 1978 and continuing until the population is reduced to approximately 1,700 overall is proper and the defendants should be ordered so to do.

The defendants have moved for a reconsideration of the June 29, 1977 Conclusions of this Court - based on *Hite v. Sessions*, 564 F. 2d 670 (4th Cir. 1977). There are some substantial differences in the facts involved and the motion to reconsider is therefore denied.

The parties are requested to prepare and submit a proposed judgment in accord with the Findings and Conclusions of June 29, 1977 and this memo. If the parties are not able to agree on a proposed judgment, each side may submit his own.

/s/ Timothy Hogan
United States District Judge

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FILED
April 7, 1978

NO. C - 1 - 75 - 251

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

KELLY CHAPMAN, et al.,

Plaintiffs

vs.

JAMES A. RHODES, et al.,

Defendants

JUDGMENT

This matter having come before the Court to determine the relief necessary to implement this Court's order of June 29, 1977, and the Court having considered the evidence presented at all hearings conducted in the case, the briefs and arguments of the parties, and its memoranda of June 29, 1977, and March 21, 1978, it is hereby ORDERED, ADJUDGED, AND DECREED:

1. The Findings of Fact and Conclusions of Law of June 29, 1977 and the Memorandum decision of March 21, 1978 are adopted and incorporated herein as the Findings of this Court for purposes of this Order.

2. Defendants shall reduce the assigned population at the Southern Ohio Correctional Facility (S.O.C.F.) from the population on March 21, 1978 (approximately 1995) by twenty - five persons on or before April 30, 1978, and shall continue to reduce the population by twenty - five persons every thirty days thereafter until the population is reduced to the single - celled capacity of the institution.

3. Defendants shall use any constitutional means of their choice to accomplish the population reduction, including reducing admissions, accelerating transfers, etc., provided that the defendants shall not transfer members of the plaintiff class to other institutions in which they will be double - celled, or placed in dormitories (unless the transferees have been reclassified).

4. Defendants shall submit to the Court and to counsel for the plaintiffs, within ten days after the end of each thirty - day period, a statement showing the number of the assigned population at S.O.C.F. at the end of the period (In - house, Absent With Leave and Absent Without Leave).

5. Costs are awarded to plaintiffs.

6. Any issue involving attorney's fees is severed and will be passed on in due course on any application filed therefor. There is no just reason to delay the entry of this judgment as to the other issues and the entry hereof is directed.

/s/ Timothy Hogan
United States District Judge